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Federal Communications Commission
Office of Secretary

**COMMENTS OF
H. RUSSELL FRISBY, JR.
PRESIDENT**

**THE COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION (COMPTel)**

**BEFORE THE
FCC PUBLIC FORUM ON
SBC/AMERITECH MERGER APPLICATION**

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Mr. Chairman, Commissioners and Staff, my name is Russell Frisby. I am the President of the Competitive Telecommunications Association (CompTel). CompTel very much appreciates this opportunity to comment on the application of SBC and Ameritech for approval of their proposed merger.

As a national industry association, CompTel represents a variety of competitive telecommunications service providers and suppliers. CompTel's 338 members include both large, nationwide companies and scores of smaller, regional carriers providing local, long distance and Internet services.

In CompTel's view, this merger should not be approved because it is contrary to the public interest, because it will harm consumers, and because it will impede competition in both the local telephone market and the market for full-service packages of communications services. However, today I will focus on the conditions that must be placed on the merger should the Commission be inclined to grant it. CompTel supports the conditions that have been proposed by others who have already spoken this morning, as well as others who will follow me, and we urge the Commission to adopt those conditions.

CompTel would like to focus the Commission's attention on two of the most serious aspects of the proposed merger: First, I will discuss the implications of SBC/Ameritech's "national/local strategy," given the enormous incumbent footprint that would result from the merger -- covering about 38 percent of all business lines nationwide. Second, I will address the consequences of allowing SBC/Ameritech to compete in-region by reselling its own local exchange services through its own

“CLEC affiliate.” I will also propose two specific conditions to address those competitive problems.

1. Competitive Concern Number One: National/Local Offerings that Combine Monopoly and Competitive Services

This merger is premised on the view that the “national business customer” can only be satisfied by a carrier with a footprint sufficiently large to capture most of the customer's locations. The path chosen by SBC and Ameritech is to “enter” and expand its footprint by acquiring other incumbents. In this way, the substantial barriers that frustrate legitimate (*i.e.*, non-incumbent) entrants can be avoided without being dismantled.

SBC and Ameritech have announced that one of the reasons they intend to merge is so that they may offer “national local customers” a package that combines the customer’s local service across a larger incumbent footprint. One element of the strategy will be for SBC/Ameritech to bundle a customer’s local services where it retains its local monopoly with services it offers in markets where SBC/Ameritech will compete as a legitimate entrant. By bundling monopoly and competitive services in a single package, SBC/Ameritech will be able to leverage its incumbent monopoly into other markets, including out-of-region markets where local competition is just beginning to emerge. CLECs, in contrast, have no incumbency to leverage. They cannot match the packages that SBC/Ameritech can create. For CLECs, every market is “out-of-region.”

SBC and Ameritech argue that the merger is required in order to enable out-of-region entry in the local exchange market. But if that is so, then the corollary conclusion must be that the entry-enabling provisions of the Telecommunications Act have not worked. Having stifled local competition, these same incumbents claim they must now merge to compete. Far from being a justification for the merger, the fact of persistent monopoly power in the local exchange is the reason for its denial.

Proposed Condition

SBC/Ameritech should not be permitted to leverage its market power as an incumbent into other, out-of-region markets where it is an entrant. To address this problem, the Commission should condition approval of the merger by prohibiting SBC/Ameritech from offering service packages that combine in-region services with out-of-region services, and from jointly marketing or otherwise linking in-region and out-of-region services.

2. Competitive Concern Number Two: Local Resale by a CLEC Affiliate

This brings me to CompTel's second competitive concern with this merger. SBC/Ameritech is likely to seek to "compete" against itself by forming a CLEC-affiliate, which in SBC/Ameritech's view should be regulated just like any other CLEC. If that CLEC-affiliate is able to offer local exchange service by reselling the local services of the SBC/Ameritech ILEC, there will be two serious

consequences. First, it will enable SBC/Ameritech to severely limit its competition. Second, it will enable SBC/Ameritech to avoid making network element based local competition workable. -

It is by now obvious that service resale does not provide a successful vehicle for local entry. Why then would an ILEC's CLEC affiliate choose to engage in service resale? The answer is threefold: First, the ILEC's CLEC affiliate is not affected by a small wholesale discount or by excessive retail rates, because payments for resold services are made to an affiliate. Effectively, payments are shifted from one pocket of the corporate trousers to another. Second, the ILEC continues to receive access revenues associated with its CLECs' customers. Unlike other CLECs, it is not concerned about the fact that in service resale, the access revenues stay with the ILEC. Third, the ILEC's CLEC affiliate does not mind the fact that with service resale, it cannot distinguish its services from those of the incumbent, because it actually wants to be perceived as the incumbent.

Proposed Condition

To address this problem, CompTel proposes the following condition: If SBC/Ameritech is allowed to have an in-region CLEC affiliate, that affiliate must not be permitted to compete through resale of the incumbent's retail services. Like other CLECs, it must use the ILEC's network elements. This condition will both put the SBC/Ameritech affiliate on the same footing as other CLECs. It will also

provide strong incentives for SBC/Ameritech to make unbundled network elements, collocation, and operations support systems available and workable.

Conclusion

CompTel urges the Commission to carefully consider the enormous consequences that would follow if this merger is allowed to go forward as presently structured. If the Commission chooses to approve the merger, it must do so only subject to conditions, including the essential conditions I have just described.

Thank you very much.